

A TRANSFORMATIONAL APPROACH  
TO WORKPLACE CULTURE



**INVESTIGATIONS**  
L A W G R O U P

## The Opportunity

### The Historic Moment

We are in the midst of a national discussion of sexual harassment in the workplace. Following allegations against powerful and public figures, social media has served as a platform for discussing sexual harassment and for inspecting the extent of individuals' experiences with the issue. People began using the hashtag #MeToo to share their stories. The emergence of a culture shift accompanied this movement, as it conveyed to people that they are not alone in having experienced harassment. Within a month after the initial #MeToo message was used on Twitter, millions throughout the world had participated in the conversation by posting, reacting, or commenting.

### Workplaces Respond

In the face of the renewed public discussion, employers throughout the country have taken steps to respond. Corporations and governmental entities have updated their sexual harassment policies and instituted new training requirements. Many of these responses focused on a review of and recommitment to standard anti-harassment provisions and training protocols. That is an important first step.

### Opportunities for a Next Generation Response

In addition to addressing specific policies and procedures, there is a larger discussion of workplace culture happening in public and private workplaces around the country. Employers have the opportunity to set expectations for workplace behavior above the bare minimum of avoiding legal liability. This includes workplaces that already have updated policies and procedures in place, as no workplace is perfect and no workplace can trust that its approaches and its culture will remain strong and state-of-the-art without regular attention. Workplaces must regularly assess the state of their culture in light of best (or better) practices as they evolve.

### Planning for a Next Generation Culture

In this paper, we outline recommendations for a "Next-Generation" plan that blends transformational best practices gleaned from public employers, corporations, and practice experts, and informed by our recent work for a public employer. The approach we recommend will put your workplace out in front in creating and maintaining a workplace where people are comfortable, safe and respected, and where discrimination or harassment are not tolerated.



## The Plan

### Next-Generation Culture Protected by Next-Generation Approaches

Recently, ILG assessed the policies and culture of a governmental body, spending hundreds of hours looking at how other institutions have addressed harassment in their workplaces, researching best practices, holding a Summit of experts to address that institution's policies, and surveying and interviewing hundreds of employees about their experience in the workplace. That recent work rested on ILG's many years of experience conducting workplace investigations and training employees. This recent work and deep experience resulted in a series of recommendations reflecting state-of-the-art approaches to addressing workplace harassment. While ILG tailored those approaches to the specific institution, much of what we learned is applicable to all workplaces.

### Recommendations for Workplaces

These Recommendations begin at the most important part: redefining the importance of culture in the workplace. Great policies, procedures and training are important, but without a strong culture they are simply window dressing. Our research overwhelmingly suggests that focusing only upon compliance is not an effective approach to preventing workplace harassment. Although your workplace must be prepared to appropriately respond to disrespectful, disruptive, and discriminatory behavior, it will be imperative at the start to invest in formalizing a culture of respect, collegiality and inclusion. Doing so takes work and calls for a layered progression involving a strong **Structure**, a commitment to **Culture**, informal **Remediation**, formal **Serious Process** to address more severe misconduct, **Transparency** for constituents, and an eye to the **Future**. These elements can be reflected in a holistic policy that captures this progression, a "Respectful Workplace Policy." In this way, by adopting a revised policy meeting the specific needs of your workplace, you will have gone far toward adopting a holistic, robust, and sustainable plan.

#### **Structure: Invest in Transformation**

The need for professional experts working on harassment policy and training, independent from outside pressures, was identified as a critical component in our research. Professionalizing and resourcing this independent capacity is consistent with steps taken by other institutions to improve their approach to harassment in the workplace. Some of the most forward-thinking developments around the country have emphasized the ability to provide informal resolution processes and support services to members of the workplace, and not just a formal investigatory process - all of which requires expertise. The precise scale and scope of this structural element is highly dependent on the size of your workforce. But ILG recommends offering, either internally or with the assistance of an outside entity, professionals dedicated to three main tasks: (1) primary caretaking of the workplace culture; (2) responsibility for complaint investigation and resolution; and (3) ongoing, forward-looking workplace engagement and assessment through training, education, and outreach. For larger workplaces, these tasks may be within the expertise of human resources staff or could take the form of a separate Office of Workplace Culture, with specialists



# INVESTIGATIONS

## L A W G R O U P

focused on particular tasks, e.g., an EEO Officer, an investigator, and/or a Workplace Culture Specialist, as well as somebody potentially serving as an outside confidential ombudsperson. For some workplaces, it might require cross-training an individual and/or engaging a consulting entity like ILG to assist in or handle aspects of these tasks.

### ***Culture: When Members Thrive***

Your primary focus should be on implementing or reinforcing and strengthening a strong workplace culture of higher expectations and awareness, affirmatively encouraging strong practices around bystander empowerment, awareness, and mutual respect. This is critical regardless of the current strength of the workplace culture. Clearly, if the culture is currently lacking, by either allowing or encouraging misbehavior to thrive, a commitment to a strong culture is paramount. But even where there are strengths in the existing culture and a widely-shared belief that the culture should be respectful, professional and congenial, it is important to formalize and protect those shared expectations.

There is strong support for the idea that culture is the first and most important variable in determining whether harassment will, or will not, thrive in a given workplaces. The importance of culture cannot be overstated. National experts are coming out on this subject strongly on the side of a respectful culture being the most important ingredient in creating a workplace where harassment simply cannot take root. This focus on culture should extend beyond the legally proscribed definitions of harassment. We recommend that your workplace (1) define the expectations for behavior above legal compliance and commit to higher expectations; (2) empower the professionals described above to implement this commitment; (3) provide tools to proactively meet those expectations; and (4) offer training that reflects your vision for how the workplace community *will* act, not just how it *will not* act.

### ***Remediation: Informal Processes When People Struggle***

When your workplace commits to this culture of higher expectations, and a policy reflecting that culture, it will need a new mechanism for addressing conduct that is inconsistent with those expectations. Your approach should reflect the reality that there is a spectrum of behavior between the aspirations reflected in an institution's values, the expectations outlined in a policy, and pervasive or severe workplace harassment. It is therefore important to respond to unprofessional, disrespectful, or disruptive workplace behavior *before* it rises to the level of harassment. We suggest a complaint system include an informal track that will allow the system to effectively respond to complaints about disrespectful and inappropriate behavior that may not implicate any protected class or unlawful harassment. That system should have multiple ways to report issues. The professional capacity you implement in your Structure changes then can jump into action, professionalizing and standardizing the response. Ultimate authority for resolving these violations of workplace expectations should rest in one of those professionals. These issues can be addressed through an array of remedial options designed to help and support the parties in reaching a confidential non-disciplinary resolution. This could include mediation, re-training, conversation facilitation or coaching, team building or other measures. For instance, if a complaint relates to inappropriately raising one's voice at a staff member, training or coaching on communication skills might be in order.

### ***Serious Process: Formal Processes for Serious Misconduct***

Even after a culture has been strengthened and remedial steps have been instituted, your workplace must have a robust system in place to address more severe allegations. Therefore, you should institute a complaint process that will fairly and confidentially determine whether discriminatory harassment, sexual harassment, or retaliation has occurred and that will promptly and proportionally hold people



# INVESTIGATIONS

L A W G R O U P

accountable when it has. Having clear and effective policies in place that prohibit discriminatory and sexual harassment, as well as retaliation, is the bare minimum required for any workplace. But your workplace can aim higher, implementing state-of-the-art policies by creating (1) professional and independent capacities to address complaints of misconduct and (2) providing detailed requirements and explanations of all aspects of the process. A feature to consider is involving independent third-parties in the process, whether in the form of an ombudsperson and/or impartial third-party investigators or consultants such as ILG, to the extent appropriate based on the specific nature and size of your workforce. Doing so will help ensure the impartiality of and trust in the process. The process itself should include, among other things, (1) detailed, standardized processes from start to finish; (2) resources to parties going through an investigation; (3) guidance for appropriate investigations; (4) timelines for completion of the process; (5) a proactive focus on anti-retaliation; and (5) appropriate disciplinary and remedial measures.

## ***Transparency***

Depending on the nature of your workplace, there may be demand or need for information sharing. Whether for the constituents of a public institution or the shareholders or customers of a private entity, access to certain information about complaints and complaint trends may be in order. This access, however, must be balanced with the needs of parties for safe, fair and impartial processes with appropriate confidentiality. Accordingly, we advise that annual statistical reporting should be done, without identifying personal data. This will achieve the balance between keeping stakeholders apprised and preserving confidentiality and the parties' dignity to the greatest extent possible.

## ***Future: Keeping Your Workplace Ahead of the Game***

The state-of-the-art in workplace harassment prevention is to look beyond legal compliance and focus on the broader workplace culture. This includes, as we have described, intercepting non-unlawful – but problematic – conduct that can create an environment where harassment can more easily occur. From this perspective, your workplace can be a leader in adopting a Next-Generation approach while not venturing too far beyond the innovations that are already occurring in workplaces across the country. In this way, upon the short-term enactment of new policies and empowerment of professionals, your workplace will already be looking to the future. But the process of assessing culture, updating procedures, and employing state-of-the-art training needs to be ongoing. Therefore, you should implement mechanisms for review of both policies and the workplace culture, along with recordkeeping and reporting to ensure the self-evaluation and improvement process continues. In this way, the approach can evolve, be corrected as needed, and remain in the forefront.

## **ILG Can Help**

To learn more about our work and how we can be of assistance to your workplace, please visit [www.ilgdenver.com](http://www.ilgdenver.com), or contact a member of our team:

Liz Rita ([liz@ilgdenver.com](mailto:liz@ilgdenver.com))  
Jen Volmer ([jen@ilgdenver.com](mailto:jen@ilgdenver.com))  
Scott Bowman ([scott@ilgdenver.com](mailto:scott@ilgdenver.com))  
Emily Smith ([emily@ilgdenver.com](mailto:emily@ilgdenver.com))  
Andy Chase ([andy@ilgdenver.com](mailto:andy@ilgdenver.com))

